

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL SMITH,)	
)	
Plaintiff,)	08 C 1557
)	
v.)	Honorable Judge
)	James Zagel
COOK COUNTY SHERIFF, SUPT,)	
UNKNOWN OFFICERS,)	
COUNSELOR PUCKETT,)	
)	
Defendants.)	

**DEFENDANT’S REPLY IN SUPPORT OF HIS
MOTION TO STRIKE**

NOW COMES Defendant Roy Puckett, by his attorney RICHARD A. DEVINE, State's Attorney of Cook County, through his assistant, SARAH M. BURKE, and in Reply in Support of his Motion to Strike, states as follows:

The parties agree that this Court entered a reasoned Order, pursuant to 28 U.S.C. § 1915(a) on April 29, 2008, finding that the Plaintiff’s Amended Complaint (the “Complaint”) states a colorable cause of action. (Dkt. 17). Despite this however, Defendant requires a more definite statement so he can properly answer or otherwise plead. Plaintiff’s Complaint supercedes any prior filing and the Defendant is bound to answer or otherwise plead in response to the controlling document. Courts have consistently held that “. . . an amended complaint supercedes and original complaint and renders the original complaint without legal effect.” General Signal Corp. v. MCI Telecommunications Corp., 66 F.3d 1500, 1514 (1995). Additionally, Federal Rule of Civil Procedure 15(a) allows the Plaintiff refer to, adopt or incorporate by reference the earlier pleading. King v. Dogan, 31 F.3d 344, 346 (5th Cir. 1994). Defendant, understanding that great deference is granted to Pro Se litigants, read Plaintiff’s

original complaint together with the controlling Complaint and the Courts §1915 Order but is unable to clearly identify what Constitutional Rights were violated or when the alleged violation occurred. Specifically, Plaintiff's original complaint references two dates, October 19, 2005 and November 2006 and the Court identifies November 2006 as the date of the incident. Defendant has a right, to fair notice so to properly defend himself against Plaintiff's allegations.

WHEREFORE, Defendant requests Plaintiff's Complaint be stricken or a more definite statement be filed and Defendant be granted twenty-one days (21) after the filing a second amended complaint to answer or otherwise plead.

Respectfully submitted,

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By /s/ Sarah M. Burke
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